

Opening Statement for Committee vote on the Nominations of Marvin Kaplan and William Emanuel to be Members of the National Labor Relations Board

We are here today because the National Labor Relations Board needs to function as intended.

The board hasn't been full in nearly two years.

And as I said at our hearing last week, I'm certainly not the only one of us who thinks so.

One Democratic senator said at a hearing on May 16, 2013: "I strongly support a fully functioning NLRB with five members. I think confirming the entire slate will ensure that the NLRB is working for American workers and American employers."

Another said at the same hearing: "What we don't need now--the last thing we need here in Washington or across the country--is more rancor, more division, more ideology, at a time we need this Board fully functioning. We need five people to get confirmed here. Any Senator who is standing in the way of getting five people confirmed and having a functioning Board has a lot of explaining to do..."

Then-Chairman Harkin said in September 2014: "Keeping the NLRB fully staffed and able to do its work will send a strong message to the American people that yes, Washington can work, and our government can function."

The National Labor Relations Board has five members with five-year, staggered terms, and a General Counsel with a four-year term. There is no statutory requirement regarding party affiliation, but the tradition has been for the president to appoint members on a 3-2 ratio favoring the Administration, with nominations for the two minority seats recommended by the Senate minority leader.

While we may often disagree with the opinions of the nominees for the other party's seats – many of us have ensured they had an up or down vote. For example, since 2013, I have voted for cloture for two board members and the current General Counsel who I then voted against confirming.

The two nominees today are for positions that have sat vacant – one for 23 months since President Obama declined to nominate a Republican for the then-minority seat, and the other for 11 months.

My hope is that these nominees will help restore some balance to the labor board.

After years of playing the role of advocate, the board should be restored to the role of neutral umpire.

Board partisanship didn't start under President Obama but it became worse under him.

When the board is too partisan, it creates instability in our nation's workplaces and does not serve the intent of the law – which is stable labor relations and free flow of commerce.

For example, three harmful actions by the board under President Obama were the Joint employer decision- which threatened to destroy the American Dream for owners of the nation's 780,000 franchise locations; the Ambush elections rule: which can force a union election before an employer

and many employees have a chance to figure out what is going on; and the Micro-union decision, which gave factions of employees within single stores a path to forming their own unions.

Nominee Marvin Kaplan is currently Chief Counsel for the Occupational Safety and Health Review Commission, where he has served since August 2015.

From 2009-2015, Kaplan worked as Counsel for the House Education and Workforce Committee and the House Oversight and Government Reform Committee.

William Emanuel is currently an attorney at Littler Mendelson in Los Angeles working on labor and employment matters.

Mr. Emanuel has spent his career in the private sector, representing trade associations, hospitals and health care organizations, schools, as well as transportation, logistics, and manufacturing companies.

Mr. Emanuel has previously represented his clients before the NLRB and has filed amicus briefs on behalf of trade associations.

Now let me say a word about process.

The nominees have completed all their paperwork in accordance with the Committee's rules, practices and procedures. Our rules require that their HELP paperwork be submitted 5 days before their hearing. Their hearing was on July 13th.

We received Mr. Kaplan's HELP paperwork and his Office of Government Ethics (OGE) paperwork on June 26th, 17 days before the hearing.

We received Mr. Emanuel's HELP paperwork on June 30th, 13 days before the hearing, and his OGE paperwork on July 6th.

Mr. Kaplan and Mr. Emanuel also offered to meet with all HELP members. Mr. Kaplan met with ten of them, including five democrats. Mr. Emanuel met with nine of them, including five democrats.

Recent comparisons show that this process is far from rushed.

Marvin Kaplan's nomination has been pending before the HELP Committee for 29 days now, and Bill Emanuel's nomination has been pending for 20 days.

In comparison, under Chairman Harkin the HELP Committee held hearings and mark-ups on NLRB nominees with far less time for consideration.

For former Board Member Kent Hirozawa's (D) seat, which Mr. Emanuel has been nominated to fill, Mr. Hirozawa's hearing was held 7 days after his nomination and his mark-up was held the next day.

Former Board Member Nancy Schiffer's (D) hearing was held 7 days after her nomination. The HELP Committee also held a markup on her nomination the next day.

Committee members were not able to get responses to any Questions for Record (QFRs) from Kent Hirowzawa or Nancy Schiffer before being forced to vote on them.

In contrast, Mr. Kaplan has responded to 53 QFRs, or 81 if you include sub-questions, and Mr. Emanuel has responded to 62 QFRs, or 101 if you include sub-questions.

I look forward to voting for these nominees and seeing a full board.